

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
INDUSTRIAL WINDOW CORP.,

Case No.: 07 CV 10959
(Rakoff, J.)

Plaintiff,

-against-

FEDERAL INSURANCE COMPANY,

**REPLY AFFIDAVIT OF
GEORGE KOUGENTAKIS**

Defendant.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

George Kougentakis, being duly sworn, deposes and says the following:

1. I am the President of Beys General Construction Corp. ("Beys"). I submit this reply affidavit in further support of the motion of defendant Federal Insurance Company ("Federal") for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint of the plaintiff as against Federal upon the ground that the instant action is barred by the resolution of disputes provisions included in the subcontract between IWC and Beys.

2. The affidavit of Michael Vicario, President of Industrial Window Corp. ("IWC"), appears to be largely duplicative of the arguments contained in IWC's Brief in Opposition. With regard to the legal arguments contained in Mr. Vicario's affidavit, our attorney has responded to them in the accompanying Reply Memorandum of Law.

3. With regard to the facts of the case, Mr. Vicario readily acknowledges the accuracy of the events set forth in my moving affidavit which have led to the current dispute. Despite that acknowledgment, Mr. Vicario contends, among other things, that IWC would have no way to pursue the contested change order through the dispute

resolution process because it has no privity with Hill or DDC. This claim is simply untrue.

4. When IWC learned that its original method of offloading the stainless steel mullions and installing the glass panels would not be permitted by the Metropolitan Transit Authority ("MTA"), IWC participated in meetings with Amber France of Hill seeking to obtain additional payment for the alleged change in their method of work. It was ultimately agreed by Hill that it would submit change order proposal G055 to DDC for approval in the amount of \$110,978.00. This change order request was submitted with the participation and agreement of IWC in a manner consistent with the prime contract between Hill and DDC. (Documentation reflecting IWC's submission is annexed hereto as Exhibit "A").¹ Thus, despite an absence of privity between IWC and Hill/DDC, IWC change order request G055 was submitted by DDC by letter dated August 13, 2007. (A copy of that letter is annexed hereto as Exhibit "B"). The information set forth in that letter came directly from IWC. Had IWC believed that it was not bound by the provisions of the prime contract, it would have looked no further than Beys for approval of the change order.

5. By letter dated October 9, 2007, DDC declined the claim (see Exhibit D to my moving affidavit). Hill advised us by letter dated November 15, 2007 that if IWC wished to pursue the claim further, they would submit it to the Commissioner's office for review. Beys in turn asked IWC if they wished to pursue the claim by letter dated November 15, 2007. (Copies of those letters are annexed hereto as Exhibit "C"). Consequently, there was no impediment to IWC pursuing the claim through the dispute

¹ Parenthetically, Beys had no involvement in determining the merits of the change order and simply served as a conduit to send information to Hill.

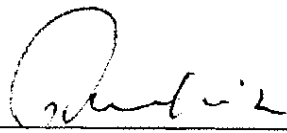
resolution process set forth in the prime contract. The absence of a "liquidating agreement" in no way prohibited IWC from pursuing the claim. In fact, Beys would have potentially violated the implied duty of good faith under the subcontract had it not allowed IWC to pursue the claim through the contractually specified dispute resolution process.

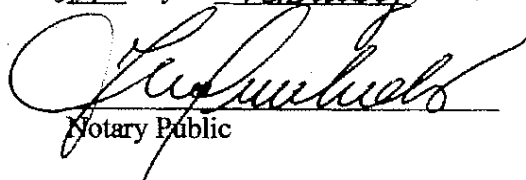
6. Although IWC indicated in a November 19, 2007 letter that it did not want to participate in the dispute resolution process, Hill nonetheless submitted the change order request to the Commissioner of DDC for consideration. By letter dated December 31, 2007, the change order request was denied by the Commissioner's office. (Copies of those two letters are annexed hereto as Exhibit "D"). Following that denial, Hill again offered to submit the claim to the Comptroller's office and we in turn offered the same to IWC. (Correspondence reflecting those offers is annexed hereto as Exhibit "E").

7. IWC rejected that offer by letter dated January 29, 2008. (A copy of that letter is annexed hereto as Exhibit "F"). Despite that refusal, the fact remains that the absence of privity had no impact whatsoever on IWC's ability to pursue the claim through the contractually specified dispute resolution process. Had IWC chosen to ultimately pursue the matter through an Article 78 proceeding, Beys would have had no objection to executing legal documents necessary to allow them to do so. In fact, in this regard, Beys is no different than IWC because it is technically not in privity with DDC either.

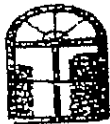
8. Beys continues to believe that the inclusion of the prime contract as a "Contract Document" obligates IWC to participate in the alternate dispute resolution process where it involves a change order resulting from an act or omission on the part of

DDC. The curtain wall logistics change order clearly falls under that category and IWC has conceded in its Brief that their grievance is the result of conduct on the part of DDC. (IWC Brief, p. 14). Absent a requirement that IWC pursue approval of its change order in accordance with the prime contract, Beys is exposed to the possibility of inconsistent verdicts on a claim for additional work in which it had no involvement. It is clear that IWC is attempting to simply end run the terms of the subcontract because of its concern that the dispute resolution process will not result in a favorable outcome. Having entered into a subcontract which has multiple provisions requiring its participation in a dispute resolution process, IWC should not be permitted to pursue an alternate legal remedy which it unilaterally deems potentially more favorable.


George Kougentakis

Sworn to before me this
29th day of February, 2008

Notary Public

IOANNA KATSIMBRAKIS
Notary Public, State of New York
No. 01K46069243
Qualified in Richmond County
Commission Expires Nov. 25, 2010



Industrial Window Corp.

515 North State Road * Briarcliff Manor, New York 10510
(914) 923-1800 * Fax: (914) 923-6828

Fax Transmission Cover Page

To: PAUL RIVERA
Comp: BEYES CONTRACTING
From: DAVE MENSE (EXT 115)
Date: 2/14/2007
Subj: SCHOMBERG CENTER
Fax: 718-336-5960

Number of Pages including cover: 6

PAUL

AS DISCUSSED, I HAVE REVIEWED AND REVISED MY CHANGE ORDER REQUEST FOR THE MTA ISSUES (CO #3). I HAVE TAKEN INTO ACCOUNT AMBERS COMMENTS ON THE DURATIONS, AND HAVE REFIGURED, BASED ON A GOOD FAITH EFFORT, OUR DURATIONS FOR MANPOWER AND EQUIPMENT. I CONCUR WITH AMBER AS FAR AS THE EQUIPMENT DURATION. I HAVE ADJUSTED MY MANPOWER TO WHAT I FEEL IS A REASONABLE EFFORT IN MEETING HER ASSESMENT.

AS FAR AS THE MTA & NYC PERMIT FEES ARE CONCERNED, I HAVE LEFT THEM IN AT THIS POINT. IF AMBER CAN SHOW US PROOF AND DOCUMENTATION FROM BOTH THE MTA AND NEW YORK CITY THAT THE FEES HAVE INDEED BEEN WAIVED, THEN I WILL DEDUCT SAID FEES FROM MY PROPOSAL ACCORDINGLY.

PLEASE REVIEW AND SUBMIT ACCORDINGLY.

THANKS

DAVE

*- Need
his
justified*

BEYS GENERAL CONSTRUCTION CORP
2520 Coney Island Avenue
Brooklyn, NY 11223

(718) 627-7780

FAX (718) 336-5960

February 19, 2007

Miss Amber France
 Project Manager
 Hill International, Inc.
 1 Penn Plaza
 New York, NY 10119

Re: Schomburg Center Library
 Renovation Project # LM001SCHO
 Change Order No. 36 (Revision 3)
 MTA Approved Protocols-
 Curtain Wall Delivery and Installation

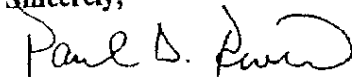
Dear Miss France:

Reference is made to your fax dated 1/31/07 concerning the above. Industrial Window Corp. has revised their proposal to incorporate most of your latest changes. You will note that the MTA and NYC Permit fees are still included in proposal. These fees were paid by Bay Crane. Industrial's cover letter states their position regarding these fees. Attached is updated cost tabulation for the various components of this change order. This attached breakdown is summarized as follows:

<u>ITEM</u>	<u>COST</u>
1. Credit for base bid protocol for unloading SS Curtain wall components and glass	(12,608) See Part 1
2. Credit for base bid protocol for installation of SS Curtain wall Components, glazing and caulking	(86,031) See Part 2
3. Extra cost for MTA approved protocol for unloading SS curtain wall components and glass	62,796 From Part 4 mark-ups SEE 296.8
4. Extra cost for MTA approved protocol for installation of curtain wall system, glazing and caulking.	145,144 From PART 5 mark-ups 122,710.96
5. Insurances (no change)	4,981
	114,282 87349.76
Sub Contractor OH & Profit (21%)	23,989 18343.45
	138,281
GC OH & Profit (5%)	6,914 105693.2
	145,195 52,846.6
	110,977.9

Please contact me if you have any questions concerning the above.

Sincerely,



Paul D. Rivera
 Project Executive



CHANGE ORDER
INDUSTRIAL WINDOW CORP.
 515 NORTH STATE ROAD
 BRIARCLIFF MANOR, NEW YORK 10510
 (914) 923-1800 (914) 923-8028 FAX

Change Order #:
3

TO: BEYLS GENERAL CONSTRUCTION DATE: 5/3/2006
 2520 CONEY ISLAND AVE
 BROOKLYN NY 11223
 ATT: PAUL RIVERA
 PHONE / FAX
 JOB # 25-231
 JOB NAME & LOCATION SCHOMBURG CENTER
 NEW YORK NY

REVISED 2/13/07
 718-427-7788 / 358-0888

TO RECEIVE DELIVERY AND INSTALL CURTAINWALL SYSTEM IN ACCORDANCE WITH MTA DIRECTIVE	
ALL BACKUP FOR THE FOLLOWING VALUES IS ATTACHED TO THIS CHANGE ORDER	
NOTE: THIS CHANGE ORDER ENCOMPASSES AND VOIDS OUT CHANGE ORDER #3A AND #4 PREVIOUSLY SUBMITTED	
CREDIT DUE OWNER FOR BASE BID UNLOADING PROCEDURES	\$12,500.00
CREDIT DUE OWNER FOR BASE BID INSTALLATION PROCEDURES	\$85,031.12
COST TO UNLOAD MATERIALS IN ACCORDANCE WITH MTA PROTOCOL	\$52,750.00
INCLUSIVE OF 3 MOBILIZATIONS AS DESCRIBED IN THE ATTACHED	
COST TO INSTALL CURTAINWALL SYSTEM IN ACCORDANCE WITH MTA PROTOCOL	\$145,144.00
INSURANCES	\$4,981.18
21 % O/H AND PROFIT	\$29,599.24
NET ADD	\$138,281.33
THE CONTRACT DURATION HAS BEEN CHANGED BY (150) DAYS	

NOTE: This revision becomes part of, and in conformance with the existing contract.

SIGNATURE: _____

DATE: _____

Accepted: The above prices and specifications of this Change Order are satisfactory and are hereby accepted. All work to be performed under same terms and conditions as specified in original contract unless otherwise stipulated.

DATE: _____

Signature: _____

Print Name & Title: _____

PART 1

BASE BID PROTOCOL FOR UNLOADING

<p>WC HAD PLANNED ON RECEIVING 50' VIA FLATBED AND UNLOADING UNLOADING SYSTEM WITH LULL AND ON SITE MANPOWER. ST GLASS WOULD BE RECEIVED DURING REGULAR WORK HOURS VIA FLATBED AND UNLOADING - STORED ON SITE CURTAINWALL 1 DAY - GLASS 1 DAY - DEPP GLASS 1 DAY - CANOPY 1 DAY --- TOTAL OF 4 DAYS</p>				600.00	\$
CURTAINWALL 1 DAY - GLASS 1 DAY - DEPP GLASS 1 DAY - CANOPY 1 DAY --- TOTAL OF 4 DAYS				600.00	\$
LULL				500.00	\$
CURTAINWALL DELIVERY				2,400.00	\$
CANOPY DELIVERY				4,585.80	\$
1 MAN 4 DAYS				3,923.20	\$
1 MAN 4 DAYS					
4 MEN 2 DAYS					
4 MEN 2 DAYS					
SUPER				125 / DAY	
FOREMAN				600 / DAY	
IRONWORKERS				71.65 / HR	
GLAZIERS				61.30 / HR	
TOTAL COST				\$ 12,608.80	
BEFORE OVERHEAD & PROFIT					

PART 2

BASE BID PROTOCOL FOR INSTALLATION OF STAINLESS STEEL CURTAINWALL COMPONENTS, GLAZING AND CAULKING

UNCRATE SYSTEM ON SIDEWALK - ERECTING SYSTEM WITH LARGE SCISSOR LIFT, ONE BOOM LIFT AND MANPOWER

UNCRATE GLASS AS REQUIRED AND THEN INSTALL THE CAULK

412 / WEEK \$ 2,472.00

265 / WEEK \$ 1,590.00

125 / DAY \$ 2,500.00

600 / DAY \$ 21,600.00

54.99 / HR \$ 45,037.12

61.30 / HR \$ 28,292.00

288 HRS

600 HRS

LARGE SCISSOR LIFT

REG SCISSOR LIFT

SUPER 1 MAN

FOREMAN 1 MAN

LABORER 1 MAN

GLAZIER 2 MEN

• DOES NOT INCLUDE DELIVERY DAYS FROM PART 1

DRIVER
TRUCK

1 MAN
16 DAYS
16 DAYS

50 / DAY
125 / DAY

\$ 800.00
\$ 2,000.00

TOTAL COST \$ 80,091.12
BEFORE OVERHEAD & DELIVERY 86031.12

PART 3

BASE BID TIMELINE FOR DELIVERY & INSTALLATION OF CURTAINWALL, GLAZING, AND CAULKING

WEEK 1 WEEK 2 WEEK 3 WEEK 4 WEEK 5 WEEK 6 WEEK 7 WEEK 8
CURTAINWALL INSTALLATION XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX
GLAZING XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX
CAULKING XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX
FINISH UP WORK XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX

PART 4

MTA APPROVED

PROTOCOL FOR UNLOADING OF SIS CURTAINWALL COMPONENTS AND GLASS

ALL OF THE WORK DESCRIBED BELOW IS TO BE PERFORMED DURING REGULAR WORKING HOURS

RECEIVE CURTAINWALL & CANOPY MATERIALS ON A FLATBED TRUCK - UNLOAD CURTAINWALL AND CANOPY MATERIALS ON
MALCOLM X BLVD USING A 35 TON CRANE WITH REQUIRED MANPOWER - SPREAD OUT MATERIALS ON SITE
RECEIVE CURTAINWALL GLASS MATERIAL ON A FLATBED TRUCK - UNLOAD CURTAINWALL GLASS MATERIAL ON MALCOLM X BLVD
USING A 35 TON CRANE WITH REQUIRED MANPOWER - SPREAD OUT MATERIALS ON SITE
RECEIVE DEPP GLASS MATERIAL ON A FLATBED TRUCK - UNLOAD DEPP'S MATERIAL ON MALCOLM X BLVD USING
A 35 TON CRANE WITH REQUIRED MANPOWER - SPREAD OUT MATERIALS ON SITE

CRANE / OPERATOR	7/7/2006	6,654.16 / DAY	\$ 6,654.16
	7/21/2006	4,557.14 / DAY	\$ 4,557.14
	8/21/2006	6,395 / DAY	\$ 6,395.00
	3 DAYS	475 / DAY	\$ 1,900.00
TRUCKER		FLAT FEE	\$ 10,000.00
NYC PERMITS		FLAT FEE	\$ 7,200.00
MTA PERMITS		400 / CRATE	\$ 7,200.00
CRATING CHARGES	18 CRATES		
• ADDITIONAL CRATES & CRATING CHARGES ARE REQUIRED FOR THE CURTAINWALL GLASS IN ORDER			
FOR THE GLAZIERS TO BETTER HANDLE THE CRATES AND SPREAD THEM AROUND THE SITE			
	3 DAYS	125 / DAY	\$ 375.00
	3 DAYS	600 / DAY	\$ 1,800.00
	1 DAY	71,657 HR	\$ 2,292.80
	2 DAYS	61.30 / HR	\$ 3,923.20
	3 DAYS	54.99 / HR	\$ 2,639.52
	66 DAYS	160 / DAY	\$ 10,560.00
SUPER	1 MAN		
FOREMAN	1 MAN		
IRONWORKERS	4 MEN		
GLAZIERS	4 MEN		
LABORERS / FLAGMEN	2 MEN		
STORAGE FEE 5/3/06 - 7/7/06			
ESTIMATED TO 7/7/06			
TOTAL COST			\$ 62,796.82
BEFORE OVERHEAD & PROFIT			\$ 58,296.82

✓ 6,654.16
✓ 4,557.14 - page 15 of backup
✓ 6,395.00 - page 17 of backup

✓ 1,900.00
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PART 5

MTA APPROVED PROTOCOL FOR INSTALLATION OF S/S CURTAINWALL SYSTEM, GLAZING, AND CAULKING

UNCRATE SYSTEM ON SIDEWALK - ERECTING SYSTEM WITH ONE LARGE SCISSOR LIFT, AND A SMALL SCISSOR LIFT ON THE INSIDE IN ORDER TO INSTALL THE HORIZONTAL MEMBERS BEFORE STARTING THE GLASS INSTALLATION, THE CURTAINWALL INSTALLATION OF THE CURTAINWALL MUST BE COMPLETE BEFORE CAULKING, THE GLASS INSTALLATION MUST BE COMPLETE.

LARGE SCISSOR LIFT	8 WEEKS	412 / WEEK	\$ 4,944.00	32.96
SMALL SCISSOR LIFT	8 WEEKS	265 / WEEK	\$ 1,180.00	21.20
SUPER	20 DAYS	125 / DAY	\$ 5,000.00	2,500
FOREMAN	40 DAYS	54.99 / HR	\$ 2,199.60	2,400.00
LABORERS	SEE CERTIFIED PAYROLLS	61.30 / HR	\$ 1,172.50	2,881.4.76
GLAZIER	SEE CERTIFIED PAYROLLS	61.30 / HR	\$ 1,172.50	5,848.0.2
DRIVER	1 MAN	50 / DAY	\$ 1,000.00	
TRUCK	20 DAYS	125 / DAY	\$ 2,500.00	
TOTAL COST				\$ 122,710.96
BEFORE OVERHEAD & PROFIT				

* DOES NOT INCLUDE DELIVERY DAYS FROM PART 4

For 7/1/06 - 9/14/06

PART 6

REVISED TIMELINE FOR INSTALLATION OF CURTAINWALL, GLAZING, AND CAULKING

CURTAINWALL INSTALLATION	WEEK 1 & 2	WEEK 3 & 4	WEEK 5 & 6	WEEK 7 & 8	WEEK 9 & 10	WEEK 11 & 12	WEEK 13 & 14
GLAZING	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
CAULKING	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
LARGE SCISSOR LIFT	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
SMALL SCISSOR LIFT	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

GLAZING WORK BEGINS ON OPPOSITE SIDE OF CURTAINWALL CREW ON GROUND LEVEL IN WEEK 9
GLAZIERS WORK ON LEFT WHILE IRONWORKERS ARE WORKING ON MAIN ENTRANCE / VESTIBULES IN WEEK 10 AND 11

8 week duration per daily log

HILL
Hill International

Hill International, Inc.
One Penn Plaza
Suite 3415
New York, NY 10119
Tel: 212-244-3700
Fax: 212-244-3740
www.hillintl.com

August 13, 2007

Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101
Attn: Mario Siriban

RE: Schomburg Center for Research in Black Culture
CAPIS ID. #: LM001SCHO
Contract #: 20040018658
Change Order No. G055: Curtain Wall Logistics Change

Dear Mr. Siriban:

Hill International's subcontract for the general construction work, with Beys Contracting Corp. is in the amount of \$4,569,000.00. This change order is issued for the differential costs in changing the logistics of the delivery and installation of the curtain wall material. Previously, Beys' subcontractor, Industrial Windows Corporation (IWC) anticipated off-loading the curtain wall steel and glass panels onto the Lenox Avenue sidewalk (work area) using an 18 wheeler truck. All the curtain wall material would be laid out at the work area. The curtain wall mullions would be erected using a Lull machine on the sidewalk and the installation of the glass panels would lag behind.

After several submissions to the MTA for their approval, Beys/ IWC means and methods were rejected and a less efficient mobilization was stipulated. The MTA prohibited heavy machinery and the bulk of the material on the sidewalk. The sidewalk was said to be incapable of sustaining the delivery truck, Lull and the material in bulk. All rigging had to be performed from the Lenox Avenue Street because the underlying Street structure was said to have a greater capacity to withstand heavy loads.

As a result, the revised curtain wall logistics entailed the following: The 18 wheeler truck would be parked outside the curb of Lenox Avenue Street. A crane was set up in the Street to pick the material from the truck to the sidewalk work area. This delivery method would be done in three phases to avoid the accumulation of material on the sidewalk at one time. The glass panels were crated differently to accommodate for the pick. The installation was performed without the Lull, causing a less efficient and lengthier installation time. The revised installation logistics included the use of a small and large scissor lift to erect the mullions and panels. Because the workers on the two scissor lifts had to work on a member at a time, there was no installation overlap between the mullions and glass panels.

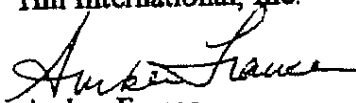
In conclusion, this change order is for the difference in costs between the anticipated curtain wall erection and the stipulated methods which entailed the implementation of three crane mobilizations and lesser efficient installation method. The costs of the change

HILL
Hill International

Hill International, Inc.
One Penn Plaza
Suite 3415
New York, NY 10119
Tel: 212-244-3700
Fax: 212-244-3740
www.hillintl.com

order also include storing the material offsite as the MTA advises on the curtain wall erection stipulation.
The change order back ups include the costs for the crane set up, delivery packaging, the machinery used and the manpower expended.
The costs for this change order are in the amount of \$110,978. The costs have been reviewed, negotiated and deemed acceptable by Hill.
Please review and approve the attached change order. If you require any additional information, do not hesitate to contact us.

Respectfully submitted,
Hill International, Inc.


Amber France
Resident Engineer

Approved:

Mario Siriban

Date

cc: J. Milano, A. Smith, C. Lee w/enc.
File

**BEYS GENERAL CONSTRUCTION
CORP.**

2520 CONEY ISLAND AVENUE
BROOKLYN, NEW YORK 11223

TEL (718) 627-7780
FAX (718) 338-5960

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Michael Vicario	Paul Rivera
COMPANY:	DATE:
Industrial Window Corp.	11/15/2007
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
(914) 923-6028	3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
(914) 923-1800	
RE:	YOUR REFERENCE NUMBER:
Schomburg Center	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

Please see the attached letter from Hill International, Inc. Please forward a "Notice of Dispute" to Hill should you choose to pursue this with the Office of the Commissioner.



Hill International, Inc.

One Penn Plaza, Suite 3415
New York, NY 10119
Telephone: (212)244-3700
Fax: (212)244-3740
www.hillintl.com

FAX TRANSMISSION

To:
Paul Rivera
General Manager

From:
Suzanne Kaplan
Contracts Administrator

Company:
Beys General Construction Corp.

Operator:

Fax Number:
(718) 236-5960

Date:
11/15/07

Time:

Reference:
Schomburg Center - Industrial Window Corp.

Message:

Please see attached.

Please contact me with any questions.

Thank you,
Suzanne Kaplan
Hill International, Inc.
P: 212-946-2925
F: 212-244-3740
suzannekaplan@hillintl.com

Number of Pages Transmitted: 2
(including this Sheet)

If you have any problems, please call (212)-244-3700

PLEASE NOTE: The information contained in this transmission is confidential. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this transmission in error, please call us collect and return these materials to us. Return postage will be reimbursed.

HILL INTERNATIONAL

PAGE 02/02

HILL
Hill International

Hill International, Inc.
One Penn Plaza
Suite 3415
New York, NY 10119
Tel: 212-244-3700
Fax: 212-244-3740
www.hillintl.com

November 15, 2007

Via Facsimile (718) 326-5960

Mr. Paul Rivera, General Manager
Beys General Construction Corp.
2520 Coney Island Avenue
Brooklyn, NY 11223

Re: Notice of Dispute on behalf of Industrial Window Corp.

Dear Mr. Rivera:

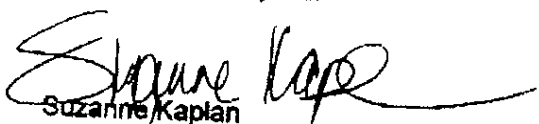
As per our conversation on November 13, 2007 and pursuant to the Agreement between Hill International, Inc. ("Hill") and Beys General Construction Corp. ("Beys"), please forward a written "Notice of Dispute" to Hill on behalf of your subcontractor, Industrial Window Corp. Upon receipt of same, Hill will forward a Notice of Dispute to the Office of the Commissioner for review.

As time is of the essence, please forward the Notice of Dispute to the undersigned immediately to ensure a timely claim with the Office of the Commissioner.

If you have any questions, please do not hesitate to call me at 212-244-3700.

Sincerely,

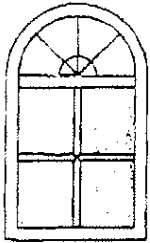
Hill International, Inc.


Suzanne Kaplan
Assistant Contracts Administrator

11/19/2007 17:31 9149236028

INDUSTRIAL WINDOW CP

PAGE 03/03



Industrial Window Corp.

515 North State Road
Briarcliff Manor, NY 10510
(914) 923-1800 • (914) 923-6028
email: info@industrialwindows.com

www.industrialwindow.com

November 19, 2007

Mr. Paul Rivera, General Manager
Beys General Construction Corp.
2520 Coney Island Avenue
Brooklyn, New York 11223

Re: Notice of Dispute
Schomburg Center Library

Dear Mr. Rivera:

I received your fax dated November 15, 2007 requesting a "Notice of Dispute" with respect to Industrial Window's change order for the MTA directive. As you know, a change order in the amount of \$138,281.43 was negotiated and agreed on between Industrial Window and Beys and Industrial Window has disputed Beys' non-payment of that change order. It is my understanding that DDC rejected Hill's change order request and that Hill rejected Beys' change order request. I also understand that Hill and Beys are obligated to participate with DDC in the dispute resolution process contained in Hill's contract with DDC. Industrial Window is not obligated to and will not participate in that dispute resolution process. Our contract was with Beys and the work required by the change order was, as previously agreed, outside our scope of work.

Thank you for your attention to this matter.

Very truly yours,

Michael Vicario, President

01/02/2008 16:42 2122443748

HILL INTERNATIONAL

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NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTIONDAVID J. BURNEY, AIA
CommissionerMARK A. CANU
Associate Commissioner
Technical Support

Monday, December 31, 2007

Ms. Suzanne B. Kaplan
Hill International, Inc
One Penn Plaza
Suite 3415
New York, NY 10119

DDC Dispute # 600
Control No: 28553
FMS_ID: LM001SCHO
Registration No. 20040018658
Project Name: Schomburg Center for Black Research
Date of Notice: November 19, 2007
Description: Hill Int'l on behalf of Beys General Construction Corp.
and Industrial Window Corp., dispute DDC's denial of
their CO # GO55 for \$ 110,978.00 for labor and materials furnished
for the projects windows and curtain wall.

Dear Ms. Kaplan:

This is in response to your November 19, 2007 Notice of Dispute, wherein Hill International ("Hill") on behalf of Beys General Construction Corp. ("Beys") and Industrial Window Corp. ("IWC"), disputes DDC's denial of their Change Order GO55 for \$110,978.00 for the differential costs in changing the logistics of the delivery and installation of the curtain wall material at the above referenced site because of the MTA prohibition of heavy machinery, the off-loading and the laying out of the bulk of the material on the sidewalk.

My review of the facts in this matter revealed, that while Beys/IWC claim is based on their argument that: "After several submissions to the MTA for their approval, Beys/IWC means and methods were rejected and a less efficient mobilization was stipulated"; my review of the Contract Documents revealed that:

While Item 1.11 of Section VII of the General Conditions clearly states that: "The Contractor shall comply with all local, state and federal laws, rules and regulations affecting the Work of this Project, including without limitation, (1) obtaining all necessary permits of the Work prior to commencement thereof, ..."; and Item 1.2.A of Section 01010 "Summary of Work" states that: "Contractor to be responsible for notifying the MTA/NYCT prior to start of construction regarding the proximity the area under construction to the 135th Street

01/02/2008 16:42 2122443740

HILL INTERNATIONAL

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subway station. Contractor to be responsible for obtaining any approvals, permits and sign-offs required by the MTA/NYCT and adhering to any rules and regulations established by the MTA/NYCT regarding construction work adjacent to a subway station. All approvals etc. should be obtained prior to the start of construction." Article 13 "Means and Methods of Construction of DDC/Hill Construction Management/Bulld Services Requirements Contract" specifically states that: "Unless otherwise expressly provided in this Agreement, the means and methods of construction shall be such as the Contractor may choose; subject, however, to the Commissioner's right to reject means and methods proposed by the Contractor which: (1) will constitute or create a hazard to the Work, or to person or property; ... The Commissioner's approval of the Contractor's means and methods of construction, or his failure to exercise his right to reject such means or methods, shall not relieve the Contractor of his obligation to accomplish the results intended by the Agreement, nor shall the exercise of such right to reject create a cause of action for damages."

Furthermore: Although Item 13.3 'MTA Approvals' of the Project's December 28, 2004 Progress Meeting, clearly states that "Hill to add a checklist of items regarding MTA approval to be addressed by the Contractor immediately upon the start of construction"; none of the submitted documents indicated that this was ever done by either Hill and/or Beys and/or IWC prior to October 2005 submission of the MTA package to the MTA for their review and acceptance.

As such, based on the above, it is my determination that as Hill, Beys & IWC had failed to substantiate their claim for the additional costs which were caused by the MTA rejection of their proposed methods and means, their dispute of DDC's rejection of their CO G055 is hereby denied, and DDC's Program Unit decision is upheld.

If you are not satisfied with this decision, you may within thirty (30) days of your receipt of this determination, present your claim to the Comptroller in accordance with the terms of your Contract.

Very truly yours,

Mark A. Canu
Associate Commissioner

Copy: David J. Burney, AIA -Commissioner

BEYS GENERAL CONSTRUCTION CORP

2520 CONEY ISLAND AVENUE
BROOKLYN, NEW YORK 11223

TEL (718) 627-7780
FAX (718) 336-5960

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Michael Vicario	Tony Hamilakis
COMPANY:	DATE:
Industrial Window Corp	01/24/2008
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
(914) 923 6028	3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
(914) 923 1800	
RE:	YOUR REFERENCE NUMBER:
Schomburg Center	

Notes/Comments:

Based on the attached letter from Hill/DDC, you have the opportunity to appeal within 30 days of the rejection notice.

Please forward a "Notice of Dispute" to Hill should you choose to pursue this with the Office of the Commissioner.

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HILL INTERNATIONAL

PAGE 01/03

**Hill International, Inc.**

One Penn Plaza, Suite 3415
New York, NY 10119
Telephone: (212)244-3700
Fax: (212)244-3740
www.hillintl.com

FAX TRANSMISSION

To:
Paul Rivera
General Manager

From:
Suzanne Kaplan
Contracts Administrator

Company:
Beys General Construction Corp.

Operator:

Fax Number:
(718) 336-5960

Date:
1/2/08

Time:

Reference:

Schomburg Center for Black Research – Industrial Window Corp. Curtain Wall Claim

Message:

Please see attached.

Please contact me with any questions.

Thank you,
Suzanne Kaplan
Hill International, Inc.
P: 212-946-2925
F: 212-244-3740
suzannekaplan@hillintl.com

Number of Pages Transmitted: 3
(including this Sheet)

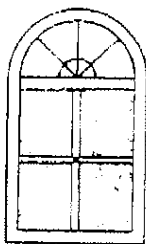
If you have any problems, please call (212)-244-3700

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01/29/2008 12:51 9149236028

INDUSTRIAL WINDOW CP

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Industrial Window Corp.

515 North State Road
Briarcliff Manor, NY 10510
(914) 923-1800 • (914) 923-6028
email: info@industrialwindow.com

www.industrialwindow.com

January 29, 2008

VIA FACSIMILE TO (718) 627-7780
AND FIRST CLASS MAIL

Mr. Paul Rivera, General Manager
Beys General Construction Corp.
2520 Coney Island Avenue
Brooklyn, New York 11223

Re: Notice of Dispute
Schomburg Center Library

Dear Mr. Rivera:

I received your faxes dated January 24, 2008 and January 25, 2008 regarding the DDC's rejection of CO#GO55 and advising that IWC must appeal the decision to the Office of the Comptroller within 30 days. As you know, a change order in the amount of \$138,281.43 was negotiated and agreed on between Industrial Window and Beys and Industrial Window has disputed Beys' non-payment of that change order.

DDC rejection of the change order request was based on provisions which were not contained in our contract. In addition, the City's dispute resolution process is also not contained or incorporated into our contract so that IWC is not obligated to and will not participate in that dispute resolution process. Our contract was with Beys and the work required by the change order was, as previously agreed, outside our scope of work.

Thank you for your attention to this matter.

Very truly yours,


Michael Vicario, President